

SUSAN E. BASINGER, ESQ. (Bar No. 140864)
HIGGS, FLETCHER & MACK LLP
401 West "A" Street, Suite 2600
San Diego, CA 92101-7913
TEL: 619.236.1551
FAX: 619.696.1410

MARK J. ROSENBERG, ESQ.
SILLS CUMMIS & GROSS P.C.
One Rockefeller Center
New York, NY 10020
TEL: 212.500.1563
FAX: 212.643.6500

Attorneys for Defendants
CENTRAL PURCHASING LLC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of the
SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

Plaintiffs,

v.

CENTRAL PURCHASING, LLC, a
California Corporations; and DOES 1-100,

Defendants.

CASE NO. 08 CV 0309 BTM (CAB)

**DEFENDANT CENTRAL PURCHASING'S
NOTICE OF MOTION AND MOTION TO
STAY ALL PROCEEDINGS**

DATE: May 16, 2008
TIME: 11:00 a.m.
CTROOM: 15
JUDGE: Hon. Barry Ted Moskowitz
TRIAL DATE: No Date Set

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT -- NO
APPEARANCE NECESSARY**

NOTICE IS HEREBY GIVEN that on May 16, 2008, at 11:00 a.m., or as soon thereafter as counsel may be heard, before the Honorable Barry Ted Moskowitz, in Courtroom 15 of the above-entitled Court, located at 940 Front Street, San Diego, California, defendant **CENTRAL PURCHASING LLC** will, and hereby does, move to stay all proceedings in this matter pending reexamination of United States Patent No. 4,935,184 by the United States Patent and Trademark Office.

This Motion is based upon this Notice and Motion; the Memorandum of Points and Authorities served and filed herewith; the Notice of Lodgment and all exhibits attached thereto,

1 served and filed therewith, and on all matters of which the court may take judicial notice; on all
2 pleadings and records filed in this action; and on such evidence as may be presented at or before
3 the hearing on this matter.

4 DATED: April 1, 2008

HIGGS, FLETCHER & MACK LLP

5
6 By: 

SUSAN E. BASINGER
Attorneys for Defendant
CENTRAL PURCHASING LLC

7
8
9
10 Dated: April 1, 2008

SILLS CUMMIS & GROSS P.C.

11
12 By: /S/ Mark J. Rosenberg

13 MARK J. ROSENBERG
14 Attorneys for Defendant
15 CENTRAL PURCHASING, LLC a
16 California Corporation; and DOES
17 1-100
18
19
20
21
22
23
24
25
26
27
28

SUSAN E. BASINGER, ESQ. (Bar No. 140864)
HIGGS, FLETCHER & MACK LLP
401 West A Street, Suite 2600
San Diego, CA 92101-7913
Telephone: (619) 236-1551
Facsimile: (619) 696-1410

MARK J. ROSENBERG, ESQ.
SILLS CUMMIS & GROSS, P.C.
One Rockefeller Plaza
New York, New York 10020
Telephone: (212) 500-1563
Facsimile: (212) 643-6500
Admitted pro hac vice

Attorneys for Defendant
CENTRAL PURCHASING, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JENS ERICK SORENSEN, as
Trustee of SORENSEN RESEARCH
AND DEVELOPMENT TRUST,

Plaintiff,

v.

CENTRAL PURCHASING, LLC a
California Corporation; and DOES
1-100,

Defendants

Case No. SDCV08-0309 (BTM) (CAB)

**MEMORANDUM IN SUPPORT OF
DEFENDANT CENTRAL
PURCHASING, LLC'S MOTION TO
STAY THE LITIGATION PENDING
THE OUTCOME OF
REEXAMINATION PROCEEDINGS**

DATE: May 16, 2008
TIME: 11:00 a.m.
CTROOM: 15
JUDGE: Hon. Barry Ted Moskowitz
TRIAL DATE: No Date Set

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT – NO
APPEARANCE NECESSARY**

I. INTRODUCTION

Defendant Central Purchasing, LLC ("Central Purchasing") respectfully submits this Memorandum in support of its motion to stay the above-captioned action, pending the determination of two separate reexaminations of the patent-in-

1 suit, U.S. Patent No. 4,935,184 (“the ‘184 Patent”), by the United States Patent and
2 Trademark Office (“PTO”).

3 The first request for reexamination, which raises substantial new questions of
4 patentability regarding claims 1, 2, 4, and 6-10 of the ‘184 Patent was granted on or
5 around October 11, 2007, and assigned Control No. 90/008,775.¹ (See Notice of
6 Lodgment (“NOL”), Exhibit A). The second reexamination, which raises different
7 substantial new questions of patentability about the same claims of the ‘184 Patent,
8 was granted on February 20, 2008, and given Control No. 90/008,976. (NOL,
9 Exhibit B).

10 During the reexaminations, the PTO will revisit the validity of the claims of
11 the ‘184 Patent, which bears directly on the issues before this Court. Given that
12 there are two pending reexaminations of the ‘184 Patent each of which involves
13 different prior art, the likelihood that the claims of the Patent will be cancelled is
14 substantial. Significantly, the ‘184 Patent is expired, and thus cannot be amended
15 during the reexaminations. As such, Plaintiff is deprived of the ability to amend the
16 claims of the ‘184 Patent in order to overcome a determination of invalidity by the
17 PTO. Thus, a determination of invalidity by the PTO would render this action
18 moot.

19 In addition to the substantial benefits of staying this proceeding pending the
20 two ongoing reexaminations, there is virtually no possibility that a stay, if granted,
21 would be *disadvantageous* or result in prejudice to Plaintiff at this juncture. In fact,
22 because the case is still in its most nascent stages, this is an ideal time to stay the
23 proceedings. Since the complaint was filed on February 15, 2008, there have been
24 no further developments other than Central Purchasing filing its answer
25 concurrently with this motion. A stay would prevent the unnecessary expenditure
26 of significant resources on the part of the Court and the parties.

27
28 ¹ The only claims of the ‘184 Patent that are not being reexamined, Claims 3 and 5,
are dependant claims.

1 In sum, a stay would provide the dual benefits of simplifying (if not
 2 eliminating) the issues for trial, while conserving the resources of the Court and the
 3 parties. Accordingly, for the reasons set forth more fully below, Central Purchasing
 4 respectfully requests that the Court grant its motion and stay the instant proceedings
 5 pending the reexamination(s) by the PTO of the '184 Patent.

6 **II. LEGAL STANDARD FOR A STAY** 7 **PENDING PTO REEXAMINATION**

8 "Courts have the inherent power to manage their dockets and stay
 9 proceedings, including the authority to order a stay pending conclusion of a PTO
 10 reexamination." *Ethicon v. Quigg*, 849 F.2d 1422, 1426-27 (Fed. Cir. 1988).
 11 Determining whether to grant a stay pending the outcome of the PTO's
 12 reexamination is a matter soundly within the discretion of the district court.
 13 *Predicate Logic, Inc. v. Distributive Software, Inc.*, Case No. 01cv1951, Doc. #126
 14 at p.2. (S.D. Cal. Nov. 14, 2002) (Moskowitz, J.) (NOL, Exhibit C); *Photoflex*
 15 *Prods., Inc. v. Circa 3 LLC*, 2006 U.S. Dist. LEXIS 37743, *2-3 (N.D. Cal. May
 16 24, 2006) (NOL, Exhibit D). There is "a 'liberal policy' in favor of granting
 17 motions to stay pending the outcome of PTO reexamination proceedings."
 18 *Sorensen v. The Black & Decker Corporation*, 2007 U.S. Dist. LEXIS 66712, *10
 19 (S.D. Cal. Sept. 10, 2007) (Moskowitz, J.) (NOL, Exhibit E); *Predicate Logic*, Case
 20 No. 01cv1951, Doc. #126 at p.2; *Nanometrics, Inc. v. Nova Measuring Instruments,*
 21 *Ltd.*, 2007 U.S. Dist. LEXIS 18785, *4 (N.D. Cal. Feb. 26, 2007) (NOL, Exhibit F);
 22 *Photoflex Prods.*, 2006 U.S. Dist. LEXIS 37743 at *3; *Sorensen v. Helen of Troy*,
 23 Case No. 07 CV 2278, Doc. #26 at p. 1 (S.D. Cal. Feb 28, 2008) (Moskowitz, J.)
 24 (NOL, Exhibit G).

25 When ruling on such a stay, courts have considered the following factors: (1)
 26 the stage of litigation, i.e., whether discovery is almost complete and whether a trial
 27 date has been set; (2) whether a stay would cause undue prejudice or present a clear
 28 disadvantage to the non-moving party; and (3) whether a stay will simplify the

1 issues in question and trial of the case.” *Sorensen*, 2007 U.S. Dist. Lexis 66712 at
 2 *10-11. *See also, Predicate Logic*, Case No. 01cv1951, Doc. #126 at p. 2;
 3 *Photoflex Prods. LLC*, 2006 U.S. Dist. LEXIS 37743 at *3; *Nanometrics*, 2007 U.S.
 4 Dist. LEXIS 18785 at *4 (N.D. Cal. Feb. 26, 2007).

5 “A stay is particularly justified where the outcome of the reexamination
 6 would be likely to assist the court in determining patent validity and, if the claims
 7 were cancelled in the reexamination, would eliminate the need to try the
 8 infringement issue.” *See In re Cygnus Telecommunications Tech., LLC Patent*
 9 *Litigation*, 385 F. Supp.2d 1022, 1023 (N.D. Cal. 2005). Indeed, with respect to the
 10 issue of a patent’s validity, the Federal Circuit has recognized that the
 11 reexamination procedure serves to “eliminate trial of that issue (when the claim is
 12 cancelled) or to facilitate trial of the issue by providing a district court with the
 13 expert view of the PTO (when a claim survives the reexamination proceeding).”
 14 *Gould v. Control Laser Corp.*, 705 F.2d 1340, 1342 (Fed. Cir. 1983).

15 Several additional benefits associated with staying litigation pending the
 16 PTO’s resolution of reexamination proceedings have been recognized:

- 17 1. Prior art presented to the court will have been first considered by the
 18 PTO, with its particular expertise.
- 19 2. Many discovery problems relating to prior art can be alleviated by the
 20 PTO examination.
- 21 3. In those cases resulting in effective invalidity of the patent, the suit
 22 will likely be dismissed.
- 23 4. The outcome of the reexamination may encourage a settlement without
 24 the further use of the court.
- 25 5. The record of reexamination would likely be entered at trial, thereby
 26 reducing the complexity and length of the litigation.
- 27 6. Issues, defenses, and evidence will be more easily limited in pretrial
 28 conferences after a reexamination.

7. The cost will likely be reduced both for the parties and the court. *Broadcast Innovation, LLC v. Charter Communs., Inc.*, 2006 U.S. Dist. LEXIS 46623, *9-10 (D.Colo. Jul. 11, 2006) (NOL, Exhibit H).

In this case, every relevant consideration militates heavily in favor of staying the present litigation pending the outcome of the PTO's reexaminations of the '184 Patent.

III. A STAY OF THIS ACTION LITIGATION PENDING THE PTO'S REEXAMINATIONS OF THE '184 PATENT IS WARRANTED

A stay in this case is particularly appropriate for the following reasons: (1) Defendant's motion for the stay is timely; (2) Plaintiff will not be prejudiced by a stay; (3) a stay will simplify the issues for trial; (4) discovery has not begun, and the parties have, in fact, not progressed in any significant measure beyond the filing of the complaint and answer; and (5) a stay will reduce the burden of litigation on the parties as well as the Court.

A. Central Purchasing's Motion for a Stay is Timely

The two pending requests for reexamination of the '184 Patent were granted in October 2007 (Control No. 90/008,775) and February 2008 (Control No. 90/008,976). The PTO is required to conduct all reexamination proceedings with "special dispatch," 35 U.S.C. § 305.

This motion is clearly timely, as the case is in its most nascent stages. Other than the filing of the complaint and answer, nothing has happened. The parties have not conducted a Rule 26(f) conference, a Rule 16(f) conference has not been held or scheduled, the parties have not served their Rule 26(a)(1) disclosures, no discovery requests have been served, the claim construction process has not commenced and no deadlines have been set with respect to any sort of discovery, briefing, or pretrial submissions. A stay at this juncture would prevent the expenditure of *any* additional resources litigating over a patent that is likely to be

1 cancelled. In other words, a stay will eliminate a potentially enormous waste of
 2 resources for the parties and the Court, which, at minimum, will “benefit from the
 3 PTO’s evaluation of how the [prior art] impacts the claims of the patent-in-suit.”
 4 *Predicate Logic*, Case No. 01cv1951, Doc. #126 at p.5 (granting motion to stay
 5 litigation filed 3 months prior to scheduled date for claim construction hearing).

6 Further, the ‘184 Patent is expired. Axiomatically, it can no longer be
 7 infringed. Given that a PTO determination of invalidity would moot this action, it
 8 is wasteful to expend any additional resources prosecuting this action while the
 9 reexaminations are pending.

10 Under similar circumstances, this Court has found a stay to be warranted. In
 11 *Predicate Logic*, a motion for stay was filed (and subsequently granted)
 12 approximately three months prior to the scheduled date for a claim construction
 13 hearing. Case No. 01cv1951, Doc. #126 at p.2. Although the *Predicate Logic* case
 14 was nearly one year old, the Court noted that “this litigation has not proceeded so
 15 far that it would be unjust to stay the action.” *Id.* at p.3. *A fortiori*, where, as here,
 16 the circumstances are the virtual inverse of the “eve of trial” the patent at issue is
 17 expired; and none of the concerns and pressures of an advanced litigation or
 18 impending trial are present, staying the action is entirely appropriate.

19 **B. Plaintiff Will Not Be Prejudiced By a Stay**

20
 21 Staying the action will not prejudice Plaintiff. First, it delayed initiating the
 22 present litigation. Specifically, Plaintiff alleges, *inter alia*, that Central Purchasing
 23 engaged in infringing conduct for “six years prior to the filing of this Complaint.”
 24 (Complaint ¶ 26, 27). In fact, Plaintiff has been harassing Central Purchasing with
 25 baseless infringement claims for nearly three years.

26 In *Ingro v. Tyco Indus., Inc.*, the court granted a motion to stay litigation
 27 pending the completion of a reexamination proceeding, based in part on the
 28 plaintiff’s delay in commencing the action. *Ingro*, 1985 U.S. Dist. LEXIS 19300,

1 *10 (N.D. Ill. May 31, 1985) (“plaintiff waited to commence litigation almost seven
 2 years after his first knowledge of alleged infringement and almost six years after the
 3 alleged first contact between plaintiff and Tyco.”). *Id.* at *6. (NOL, Exhibit I). The
 4 *Ingro* court held:

5 The court agrees that especially in light of plaintiff’s own
 6 delay in initiating litigation, a stay pending completion of
 7 reexamination proceedings, which on average involve
 8 15.9 months from filing date to termination in the PTO,
 9 will constitute neither undue delay nor unreasonable
 10 delay.

11 *Id.*

12 Plaintiff will also not be prejudiced by the length of the two reexamination
 13 proceedings. As this Court has recognized, “the general prejudice of having to wait
 14 for resolution [of a reexamination proceeding] is not a persuasive reason to deny the
 15 motion for stay.” *Predicate Logic*, Case No. 01cv1951, Doc. #126 at p.4-5
 16 (granting motion for stay). Courts have repeatedly held that the delay inherent to
 17 the reexamination process does not constitute, by itself, undue prejudice. *See e.g.*,
 18 *Photoflex Prods.*, 2006 U.S. Dist. LEXIS 37743 at *7; *Nanometrics*, 2007 U.S.
 19 Dist. LEXIS 18785 at *9; *KLA-Tencor Corp. v. Nanometrics, Inc.*, 2006 U.S. Dist.
 20 LEXIS 15754, *7 (N.D. Cal. Mar. 16, 2006) (NOL, Exhibit J).

21 Moreover, some delay in the instant action “is more than off-set by increased
 22 certainty of whether this single patent [the ‘184 Patent] will survive reexamination
 23 and whether there will be any need for litigation” at all. *Nanometrics*, 2007 U.S.
 24 Dist. LEXIS 18785 at *10. These arguments are even more compelling, given the
 25 expiration of the patent-in-suit and the fact that two reexaminations concerning
 26 different prior art are pending.

27 In short, as this Court found in Plaintiff’s case against Black & Decker,

28 Plaintiff’s cognizable claims of prejudice if a stay should
 be entered basically boil down to his inconvenience in

1 delaying final collection of any monetary award of
 2 royalties, assuming he ultimately wins. However, as the
 3 court recognized in Broadcast [Innovation, LLC], the
 4 prejudice factor 'is best summarized by one question: do
 5 the Plaintiffs have an adequate remedy at law?' Just as in
 6 Broadcast, the answer here is that clearly Plaintiff does
 7 have an adequate remedy ... the '184 Patent will expire in
 8 February 2008 independent of reexamination ... Plaintiff
 9 would not have been granted any injunctive relief by this
 10 Court. Therefore, his claim would have been restricted to
 11 past monetary damages, which, with the addition of
 12 prejudgment interest, are fully capable of compensating
 13 Plaintiff.

14 *Sorensen*, 2007 U.S. Dist. LEXIS 66712 at *13-15. *See also*, *Nanometrics*, 2007
 15 U.S. Dist. LEXIS 18785 at *9. In other words, since Plaintiff cannot seek or obtain
 16 injunctive relief in this case, there is no potential prejudice to Plaintiff from a stay.

17 In sum, there is no identifiable prejudice which would impact Sorensen as a
 18 result of a stay being entered in this case. The case remains at a decidedly early
 19 stage, and the present time is appropriate, if not ideal, for the requested stay.

20 **C. A Stay Will Simplify the Issues for Trial**
 21 **or Eliminate the Need for a Trial Altogether**

22 As the Federal Circuit has explained with respect to the issue of patent
 23 validity, "one purpose of the reexamination procedure is to eliminate trial (when the
 24 claim is cancelled) or facilitate trial of that issue by providing the district court with
 25 the expert view of the PTO (when a claim survives the reexamination
 26 proceedings)." *Gould*, 705 F.2d at 1342; *see also Predicate Logic*, Case No.
 27 01cv1951, Doc. #126 at p.5. The circumstances are especially compelling here in
 28 light of the expiration of the '184 Patent. Specifically, unlike most reexamination
 29 proceedings, Plaintiff will not be afforded the opportunity to amend the claims of
 30 the '184 Patent. 37 CFR § 1.530(j) provides:

No enlargement of claim scope. No amendment may
 enlarge the scope of the claims of the patent or introduce

new matter. No amendment may be proposed for entry in an expired patent. Moreover, no amendment, other than the cancellation of claims, will be incorporated into the patent by a certificate issued after the expiration of the patent.

37 C.F.R. §1.530(j).

The cancellation of the original patent claims is the only “amendatory” change permitted in an expired patent.

Manual of Patent Examining Procedure § 2250(III).

Simply put, the ongoing reexaminations of the ‘184 Patent will determine whether the claims of the ‘184 Patent (as well as Plaintiff’s ability to assert infringement thereof) live or die. At a minimum, the reexaminations will simplify (and likely eliminate entirely) the issues for trial in this case. If the present litigation is not stayed, there is a substantial risk that an enormous expenditure of time, effort, and the resources of the parties and the Court will be wasted on discovery, claims construction and motion practice all in connection with claims that may ultimately be cancelled by the PTO.

**D. A Stay Will Reduce the Burden of
Litigation on the Parties as Well As the Court**

With two reexaminations of the ‘184 Patent now pending before the PTO, there is little, if any, justification for conducting parallel proceedings before this Court. A stay would reduce the burdens associated with litigation (such as cost and time) for both the parties and the Court as well. Indeed, this is the very reason that the reexamination process was codified. In passing the legislation that established the reexamination proceeding, Congress stated, with approval, the inherent power – and liberal discretion -- of the district courts to grant stays when appropriate:

It is believed by the committee that stay provisions are unnecessary in that such power already resides with the Court to prevent costly pre-trial maneuvering which attempts to circumvent the reexamination procedure. **It is**

1 **anticipated that these measures provide a useful and**
2 **necessary alternative for challengers and for patent**
3 **owners to rest the validity of United States patent in**
4 **an efficient and relatively inexpensive manner.**

5 H.R.Rep. No. 1307 Part I, 96th Cong., 2d Sess. 4, reprinted in 1980 U.S. Code
6 Cong. & Ad. News 6460, 646 (emphasis added).

7 Absent a stay, the parties will soon embark on a path of extensive (and very
8 expensive) discovery on the issues of infringement, invalidity and damages. The
9 parties and the Court will need to engage in the claims construction process. The
10 parties will each likely retain experts on the topics of infringement, invalidity and
11 damages and dispositive motions will likely follow. All of the costs and time
12 associated with these tasks can be greatly reduced (if not eliminated) by staying the
13 present litigation, with no prejudice to Plaintiff.

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **IV. CONCLUSION**

2 For the foregoing reasons, Defendant Central Purchasing respectfully
3 requests that the Court stay this case pending completion of the PTO's ongoing
4 reexaminations of the '184 Patent.

5 DATED: April 1, 2008

HIGGS, FLETCHER & MACK LLP

6

7

8

9

10

11

Dated: April 1, 2008

12

13

By: /S/ Mark J. Rosenberg

14

Mark J. Rosenberg

15

Attorneys for Defendants

16

CENTRAL PURCHASING, LLC a

17

California Corporation; and DOES 1-100,

18

19

20

21

22

23

24

25

26

27

28

1 SUSAN E. BASINGER, ESQ. (Bar No. 140864)
basinger@higgslaw.com
2 HIGGS, FLETCHER & MACK LLP
401 West "A" Street, Suite 2600
3 San Diego, CA 92101-7913
TEL: 619.236.1551
4 FAX: 619.696.1410

5 MARK J. ROSENBERG, ESQ.
mrosenberg@sillscummis.com
6 SILLS, CUMMIS & GROSS P.C.
One Rockefeller Plaza
7 New York, NY 10020
TEL: (212) 500-1563
8 FAX: (212) 643-6500

9 Attorneys for Defendant
CENTRAL PURCHASING LLC
10

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 JENS ERIK SORENSEN, as Trustee of
14 SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

15 Plaintiff,

16 v.

17 CENTRAL PURCHASING LLC, a
California corporation; and DOES 1-100,

18 Defendant.
19

CASE NO. 08 CV 0309 BTM CAB
PROOF OF SERVICE BY MAIL

CASE FILED: February 15, 2008
TRIAL DATE: Not Yet Set

20
21 I am a citizen of the United States and employed in San Diego County, California. I am
22 over the age of eighteen years and not a party to the within-entitled action. My business address
23 is 401 West "A" Street, Suite 2600, San Diego, California 92101-7913. A copy of the within
24 document(s):

25 DEFENDANT CENTRAL PURCHASING'S NOTICE OF
MOTION AND MOTION TO STAY ALL PROCEEDINGS

26 MEMORANDUM IN SUPPORT OF DEFENDANT
27 CENTRAL PURCHASING, LLC'S MOTION TO STAY THE
LITIGATION PENDING THE OUTCOME OF
28 REEXAMINATION PROCEEDINGS;

**DEFENDANT CENTRAL PURCHASING'S NOTICE OF
LODGMET**

BY ELECTRONIC FILING:

I am familiar with the United States District Court, Southern District of California's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the court. The court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities. Under said practice, the following CM/ECF users were served:

Melody A. Kramer, Esq.
Kramer Law Offices, Inc.
9930 Mesa Rim Road, Suite 1600
San Diego, CA 92121

Attorney for Plaintiff
JENS ERIK SORENSEN, as Trustee
of Sorensen Research and
Development Trust
Phone: (858) 362-3150
mak@kramerlawip.com

J. Michael Kaler, Esq.
Kaler Law Offices
9930 Mesa Rim Road, Suite 200
San Diego, CA 92121

Attorney for Plaintiff
JENS ERIK SORENSEN, as Trustee
of Sorensen Research and
Development Trust
Phone: (858) 362-3151
Michael@kalerlaw.com

BY UNITED STATES MAIL:

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. The following non-CM/ECF users were served:

1
2 Mark J. Rosenberg
3 Sills, Cummis & Gross PC
4 One Rockerfeller Plaza
5 New York, NY 10020

Co-Counsel for Defendant
CENTRAL PURCHASING, LLC
Phone: (212) 500-1563
mrosenberg@sillscummis.com

6 I declare that I am employed in the office of a member of the bar of this court at whose
7 direction the service was made.

8 Executed on April 1, 2008, at San Diego, California.

9
10 
11 LINDA McMULLEN 105683-1
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28